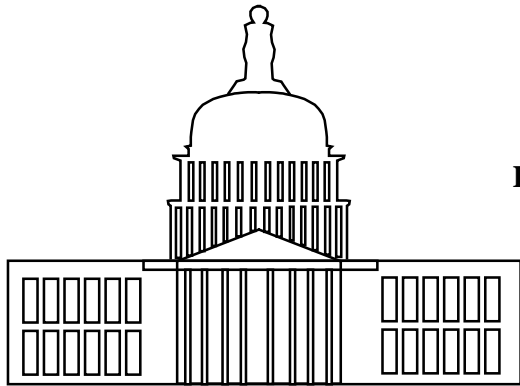


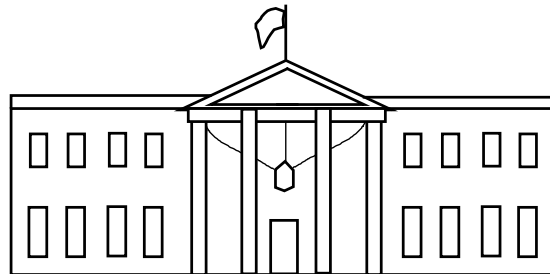
CHAPTER 2

ORGANIZATIONAL ROLES AND RESPONSIBILITIES

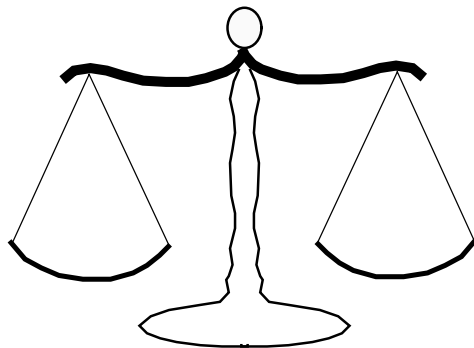


**LEGISLATIVE
BRANCH**

**EXECUTIVE
BRANCH**



**JUDICIAL
BRANCH**



Learning Objectives

- 2-1 State the role of the legislative branch of Government relative to the acquisition system.
- 2-2 State the role of the executive branch of Government relative to the acquisition system.
- 2-3 State the role of the judicial branch of Government relative to the acquisition system.
- 2-4 State the role of the public and non-Government organizations in the acquisition system.

Exhibit 2-1. Learning Objectives.

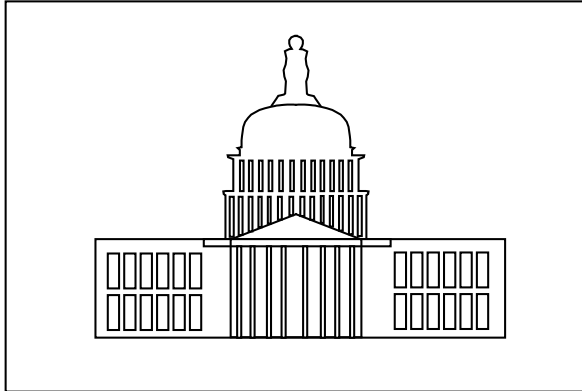
CHAPTER INTRODUCTION

As prescribed by the Constitution, responsibility for the Federal acquisition system is divided among the legislative, the executive, and the judicial branches. The major roles played by the three branches of Government in acquisition are depicted in Exhibit 2-2.

In this chapter, you will learn what those major roles are and the identity of the major Government organizations with acquisition responsibilities. You will also learn about public participation in formulating acquisition policies and procedures.

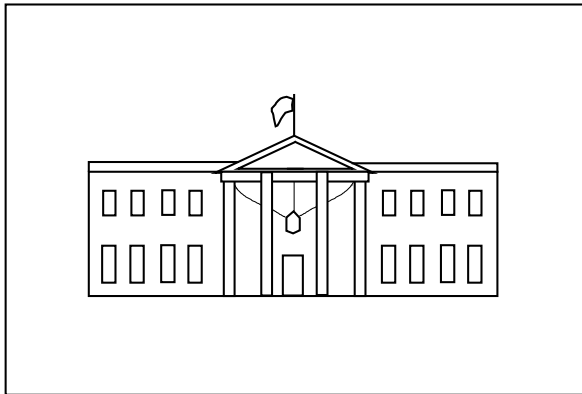
ORGANIZATIONAL ROLES AND RESPONSIBILITIES

ROLES



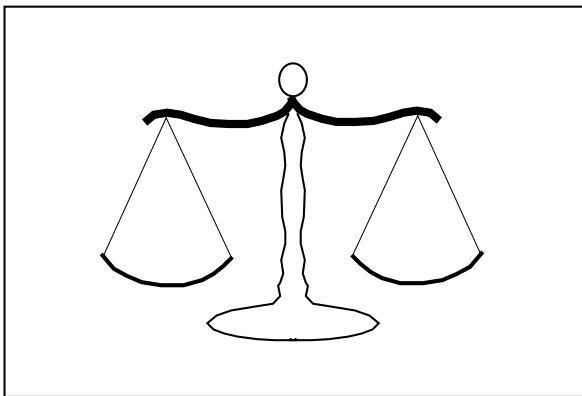
LEGISLATIVE BRANCH -- CONGRESS

- **PASSES LAWS**
- **APPROPRIATES MONEY**



EXECUTIVE BRANCH -- THE PRESIDENT

- **DEVELOPS PLANS, PROGRAMS, AND BUDGETS**
- **EXECUTES BUDGETS AND IMPLEMENTS PLANS AND PROGRAMS**
- **ISSUES EXECUTIVE ORDERS**



JUDICIAL BRANCH -- THE COURTS

- **GIVES MEANING TO LAWS**
- **RENDERS DECISIONS PERTAINING TO THE TERMS OF A CONTRACT**

Exhibit 2-2. Major Acquisition Roles of the Branches of Government

2.1 THE LEGISLATIVE BRANCH

The legislative branch includes not only the United States Senate and the United States House of Representatives, but also such entities as the General Accounting Office. The Congress primarily influences the Federal acquisition system through laws and appropriations.

Laws

Congress passes laws (statutes), generally identified as Public Laws (P.L.). Among other things, these laws establish policies and procedures for the Federal acquisition process. Examples of recent legislation that has had a major impact on Federal acquisitions are:

- P.L. 85-536, the Small Business Act, as amended.
- P.L. 98-369, the Competition In Contracting Act.
- P.L. 100-679, the Office of Federal Procurement Policy Act Amendments of 1988.
- P.L. 103-335, the Federal Acquisition Streamlining Act (FASA) of 1994.
- P.L. 104-106, the Clinger-Cohen Act of 1996 (also referred to as the Federal Acquisition Reform Act or FARA).

Appropriations

Congress influences acquisitions through the appropriations process, in terms of funds available and limits placed on use of the funds. Money may be used only for the purpose for which it was appropriated. Furthermore, money appropriated for acquisition purposes must be obligated by contract awards within the time specified; otherwise, the money “expires” and cannot be used.

2.1.1 The Legislative Process

The legislative process begins when a Member of the Congress introduces a bill in his or her chamber. The Clerk of the chamber numbers the bill (S# or H.R.#), and the Speaker of the House or President of the Senate assigns it to the appropriate committee.

The committee’s chair typically assigns each new bill to a subcommittee. Members on the subcommittee, with assistance from the committee’s professional and clerical staff, first conduct any necessary factfinding on the proposed bill. Among other things, the subcommittee may request a report on the bill from the concerned departments and agencies and from the General Accounting Office. The subcommittee may also hold public hearings on the bill. The subcommittee then usually meets in executive

ORGANIZATIONAL ROLES AND RESPONSIBILITIES

session to “mark-up” the bill and reach a decision on whether to report the bill, as amended in the marking-up session, or to table it.

If the bill is reported to the full committee, the committee then has the choice of reporting the bill to the full chamber—with or without amendments—or of tabling it. If the bill is to be reported favorably to the full chamber, one of the Members writes the committee report which typically describes the purpose and scope of the bill and the reasons for its recommended approval. The report frequently includes a section-by-section analysis of the bill. Other members may file supplemental, minority, or additional views. Committee reports are perhaps the most valuable single element of the law’s legislative history, in terms of interpreting the purpose and meaning of the law.

Reported bills are voted upon in the originating Chamber, usually after revision. The passed version then goes to the other chamber, where it is assigned to a committee and the process is repeated. If the second Chamber adopts the bill with substantial or controversial amendments, the bill is assigned to a conference committee made up of members of both Chambers.

When a proposed bill, as submitted or amended, is passed by both Chambers, it is sent to the President for signature. If signed, the bill becomes law. If vetoed, it may or may not become law, depending on whether Congress overrides the veto. Once passed, the bill becomes a public law that may be codified, in whole or in part, in the appropriate sections of the United States Code.

2.1.2 The Budget Process

In appropriating and expending funds, the Federal Government generally operates on a Fiscal Year basis. Presently, the Government’s Fiscal Year begins on October 1 and ends on September 30 of the next calendar year.

The Government’s budget for any given fiscal year is established and executed in four basic phases:

1. Budget formulation and transmittal to the Congress prior to the fiscal year.
2. Authorization and appropriation of funds by the Congress for the fiscal year.
3. Budget execution during the fiscal year.
4. Review and audit.

CHAPTER 2

Budget Formulation

Every January, the President transmits a budget to the Congress for the fiscal year that begins on the following October 1. This transmittal represents months of collaborative factfinding, planning, and analysis by the President, Office of Management and Budget (OMB), other Executive Office units, and Federal agencies.

This factfinding and planning is performed in part by program managers. Among other things, managers forecast the acquisition requirements of their programs and estimate related costs for the fiscal year to come and for a number of out-years thereafter. Such estimates are made long before the managers initiate the corresponding Purchase Requests (PRs) to contracting offices.

Proposed acquisition requirements and cost estimates enter the stream of information, evaluations, and policy decisions that influence the President's general guidelines for preparing agency budget requests. The President establishes these guidelines in the spring, at least eighteen months before the budget fiscal year begins. For instance, guidelines for the FY1990 budget were prescribed in the spring of 1988. Under the multi-year budget planning system, the budgetary guidelines cover the coming fiscal year and the four fiscal years beyond.

In the summer, agencies prepare their budget requests. At this time, program managers have another opportunity to revise their forecasts of acquisition requirements and bring them into line with the budgetary guidelines. Agency budget requests are reviewed in detail in the fall by the OMB and presented to the President. The President submits an overall budget to the Congress in January.

Authorization and Appropriations

The Congress begins its formal review of the President's budget proposals when it receives them. The Congress can approve, modify, or disapprove these proposals. It can change funding levels, eliminate programs, or add programs not requested by the President.

Before appropriating funds, the Congress decides whether or not to authorize the program and, if it decides favorably, enacts authorizing legislation. Many programs are authorized for a specified number of years or indefinitely. Other programs require annual authorizing legislation. After authorizing a program in one law, the Congress normally enacts a separate law to appropriate funds to operate the program.

When appropriating funds, the Congress does not vote directly on the level of outlay, but rather on budget authority or authority to incur obligations that will result in immediate or future outlays. Obligations are legally

ORGANIZATIONAL ROLES AND RESPONSIBILITIES

binding commitments (e.g., contract awards) made by Federal agencies during a given period that will require outlays during the same or some future period. Outlays are checks issued or cash disbursed.

For the majority of Federal programs, budget authority becomes available each year only as voted by the Congress. In other cases, the Congress has voted permanent budget authority, under which funds become available annually without further congressional action.

After passing the Congress, authorization and appropriations measures are transmitted to the President for approval or veto. When appropriations are not enacted by the beginning of the fiscal year, the Congress enacts a “continuing resolution” to provide authority so that the affected agencies may continue operations to a specific date or until their regular appropriations are approved.

Budget Execution and Control

The Director of OMB apportions appropriated funds to each agency by time periods and by activities. Such funds are then available for obligation during the fiscal year through such means as contract awards.

However, not all of the new budget authority for the fiscal year may be obligated or spent in that year. For example, the budget authority for many major construction and procurement programs covers the estimated full cost of projects at the time they are started. Likewise, budget authority for most long-term contracts covers the estimated maximum obligation of the Government. As a result, a large amount of budget authority carries over from one year to the next. Most is earmarked for specific uses and is therefore not available for other programs.

For Federal Contracting Officers (COs), this complicates the task of reviewing PRs. COs must ensure that funds earmarked for the contract are in fact properly obligated for that acquisition (see Section 6.2.1.2 of this text).

Review and Audit

Individual agencies are responsible for assuring that the obligations they incur and the resulting outlays are in accordance with laws and regulations. Within most agencies, Inspector Generals audit programs. For the Government as a whole, OMB reviews program and financial reports. In addition, Congressional oversight takes such forms as committee hearings and GAO audits, as described in the next sections.

CHAPTER 2

2.1.3 Committees

The Congress has established a number of standing committees. Many committees create subcommittees to focus on specific issues. Committees and subcommittees are assisted by appointed staff who have various administrative, technical, or legal skills.

Because acquisition (particularly defense) represents such a large portion of the Federal budget, several committees and subcommittees monitor procurement and contracting matters. Some of the more important of these committees are shown in Exhibit 2-3.

CONGRESSIONAL COMMITTEES THAT MONITOR ACQUISITION AND CONTRACTING MATTERS

Senate Committees:

- Armed Services
- Governmental Affairs
- Small Business

House Committees:

- National Security
- Government Reform and Oversight
- Small Business

Exhibit 2-3. Congressional Committees that Monitor Acquisition and Contracting Matters

2.1.4 General Accounting Office

In addition to the committee system, Congress created the General Accounting Office (GAO). The GAO is headed by the Comptroller General of the United States. GAO is informally referred to as “the watchdog for the Congress.” GAO performs several functions directly related to the acquisition process.

Oversight and Investigations

GAO audits and investigates agency programs and management, focusing on fraud and mismanagement.

Protests

The Comptroller General is authorized to recommend decisions to agency heads on protests that are filed against the Government with the GAO pertaining to the award or non-award of contracts (see Chapter 7). Decisions of the Comptroller General are an important element of procurement-related case law, as they establish precedents and interpretations of policies that have a Governmentwide impact. Contracting Officers often research and cite decisions of the Comptroller General on protests when making potentially controversial decisions relative to the solicitation or award of a contract.

2.2 THE EXECUTIVE BRANCH

The executive branch, headed by the President of the United States, plays several major roles relative to acquisitions. Among others, these roles include:

- Developing plans, programs, and budgets for consideration by the Congress.
- Executing budgets and implementing the plans and programs authorized by the Congress, including:
 - Determining whether to meet program needs through in-house performance or by contracting.
 - Awarding and administering contracts.
- Supplementing and augmenting statutory acquisition policies and procedures through such means as Executive Orders.
- Developing and maintaining the Federal Acquisition Regulatory system to implement statutory and executive branch policies and procedures for the Federal acquisition process.

The principal organizations and individuals in the executive branch that play a Governmentwide role in acquisition are described below. (Roles and responsibilities for the acquisition process within agencies are discussed in Chapter 4).

2.2.1 The President

- Establishes Governmentwide acquisition policies and procedures. For example, some Presidents have issued executive orders on acquisition issues (see Chapter 3, Exhibit 3-3).
- Makes political and management decisions relative to programs and related budget requests.

- Appoints agency heads and other officials who have direct or indirect management control over acquisition programs.

2.2.2 The Office of Management and Budget (OMB)

- Recommends programs and funding levels for programs.
- Monitors programs and, as appropriate, adjusts funding levels.
- Develops and issues policy guidance on such management concerns as paperwork reduction, grants management, and, through the Office of Federal Procurement Policy, on procurement.
- Reviews proposed regulations for compliance with policy guidance.

2.2.3 The Office of Federal Procurement Policy (OFPP)

The OFPP is part of OMB; its Administrator is appointed by the President. OFPP provides leadership and direction to Federal procurement programs. It does so, in part, through OMB Circulars such as Circular A-109, “Major Systems Acquisition” and OMB Circular A-76, “Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government.” To carry out its obligations, OFPP’s responsibilities include those listed in Exhibit 2-4.

2.2.4 Boards of Contract Appeals

The Contract Disputes Act provides the statutory authority for a Board of Contract Appeals (BCA) to resolve contract disputes between the CO and the contractor. Several of the larger agencies have their own independent BCAs. Agencies that do not have a BCA use the BCA of another agency when needed. Contracting officers often research and cite decisions of the Boards on claims when interpreting and administering contracts.

2.2.5 The Federal Acquisition Regulatory Council

This council is comprised of the Administrator for Federal Procurement Policy, the Secretary of Defense, the Administrator of National Aeronautics and Space, and the Administrator of General Services. As provided in § 25 of the Office of Federal Procurement Policy Act, the Council assists “in the direction and coordination of Government-wide procurement policy and Government-wide procurement regulatory activities in the Federal Government.”

OFPP RESPONSIBILITIES

Provides overall direction of procurement policy and leadership in the development of procurement systems of the executive agencies.

Prescribes Governmentwide procurement policies for implementation in the FAR.

Prescribes Governmentwide procurement regulations, procedures and forms, when the FAR Council fails to reach a timely agreement on the regulation for implementing a Governmentwide procurement policy.

Provides leadership in the establishment, development and maintenance of the FAR.

Coordinates the development of Governmentwide procurement systems standards.

Provides leadership and coordination in the formulation of executive branch positions on procurement-related legislation.

Oversees the collection, development, and dissemination of procurement data through the Federal Procurement Data System.

Provides for and directs the activities of the Federal Acquisition Institute (including recommending to the Administrator of General Services a sufficient budget for such activities).

Solicits the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms.

Develops standard contract forms and language.

Develops policies to ensure maximum practicable opportunities for participation in procurements below the simplified acquisition threshold by small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals, and small businesses owned and controlled by women; and also develops policies to promote achievement of goals for participation by such businesses in the Federal acquisition process.

Provides for Governmentwide awards to outstanding vendors and Federal acquisition personnel.

Develops innovative procurement methods and procedures to be tested by selected executive agencies.

Advises the President and the Congress on matters relating to procurement.

Exhibit 2-4. Responsibilities of the Office of Federal Procurement Policy

2.2.6 The Attorney General of the United States

The Attorney General represents the executive branch in matters pertaining to the constitutional aspects of acquisition legislation or in the prosecution of acquisition-related fraud.

2.2.7 Executive Agency Heads

“Head of the agency” (also called “agency head”) means the Secretary, Attorney General, Administrator, Governor, Chairperson, or other chief official of an executive agency, unless otherwise indicated, including any deputy or assistant chief official of an executive agency; and the term “authorized representative” means any person, persons, or board (other than the contracting officer) authorized to act for the head of the agency or Secretary.

Agency heads carry out Governmentwide acquisition policies, procedures, and regulations. In addition, they, and their designees, establish supplementary acquisition regulations and other internal policies and procedures and are responsible for fulfilling agency acquisition needs.

2.3 THE JUDICIAL BRANCH

The judicial branch tries all legal cases that involve the Government. For example, when the contracting officer or cognizant BCA cannot administratively settle a dispute between the Government and one of its contractors under the terms and conditions of the contract, the issue may be taken to court (generally as provided for by the “Disputes” clause of the contract). The court resolves such disputes based on Federal statutes, case law, and the terms and conditions of the contract.

If the contractor chooses to bypass the BCA and go directly to court, the case is heard by the United States Court of Federal Claims. To appeal either a BCA or Court of Federal Claims decision, the appellant (either the contractor or the Government) files with the United States Court of Appeals for the Federal Circuit. Court decisions give meaning to (or serve to interpret):

- Laws passed by the legislative branch, or
- Policies and regulations originated by the executive branch.

In addition to interpreting laws, a court may render decisions pertaining to the terms and conditions of a specific contract. COs often refer to these decisions as they attempt to resolve protests or disputes.

2.4 PUBLIC PARTICIPATION

Organizations and individuals in the private (non-Government) sector also play a role in the acquisition process. Participants include:

- Trade associations.
- Professional societies.
- Companies.
- Individuals.

Organizations and individuals can influence Congress to pass or alter legislation. They can also influence how the legislation is implemented. In addition, the public is invited to comment on proposed changes to the Federal Acquisition Regulation, as published in the Federal Register (see Chapter 3). These comments are taken into consideration when the final rule or regulation is prepared for publication and implementation.

